

will supply such documentation within the time limits allowed for an answer.

(d) *Exception.* Section 7543(b)(1) of title 5, U.S. Code, authorizes an exception to the 30 days' advance written notice when the agency has reasonable cause to believe that the appointee has committed a crime for which a sentence of imprisonment may be imposed and is proposing a removal or suspension. This notice exception is commonly referred to as the "crime provision." This provision may be invoked even in the absence of judicial action.

(e) *Representation.* Section 7543(b)(3) of title 5, U.S. Code, provides that an appointee covered by this part is entitled to be represented by an attorney or other representative. An agency may disallow as an appointee's representative an individual whose activities as representative would cause a conflict of interest or position, or an employee of the agency whose release from his or her official position would give rise to unreasonable costs or whose priority work assignments preclude his or her release.

(f) *Agency review of medical information.* When medical information is supplied by the appointee pursuant to paragraph (c)(3) of this section, the agency may, if authorized, require a medical examination under the criteria of § 339.301 of this chapter, or otherwise, at its option, offer a medical examination in accordance with the criteria of § 339.302 of this chapter. If the appointee has the requisite years of service under the Civil Service Retirement System or the Federal Employees' Retirement System, the agency must provide information concerning disability retirement. The agency must be aware of the affirmative obligations of the provisions of 29 CFR 1614.203, which require reasonable accommodation of a qualified individual with a disability.

(g) *Agency decision.* (1) In arriving at its decision, the agency will consider only the reasons specified in the notice of proposed action and any answer of the appointee or the appointee's representative, or both, made to a designated official and any medical documentation reviewed under paragraph (f) of this section.

(2) The notice must specify in writing the reasons for the decision and advise

the appointee of any appeal rights under § 752.605 of this part. The agency must deliver the notice of decision to the appointee on or before the effective date of the action.

(h) *Applications for disability retirement.* Section 831.1204(e) of this chapter provides that an appointee's application for disability retirement need not delay any other appropriate personnel action. Section 831.1205 and § 844.202 of this chapter set forth the basis under which an agency must file an application for disability retirement on behalf of an appointee.

§ 752.605 Appeal rights.

(a) Under 5 U.S.C. 7543(d), a career appointee against whom an action is taken under this subpart is entitled to appeal to the Merit Systems Protection Board.

(b) A limited term or limited emergency appointee who is covered under § 752.601(c)(2) also may appeal an action taken under this subpart to the Merit Systems Protection Board.

§ 752.606 Agency records.

The agency must maintain copies of, and will furnish to the Merit Systems Protection Board and to the appointee upon his or her request, the following documents:

- (a) Notice of the proposed action;
- (b) Appointee's written reply, if any;
- (c) Summary of the appointee's oral reply, if any;
- (d) Notice of decision; and
- (e) Any order effecting the action, together with any supporting material.

PART 754 [RESERVED]

PART 771—AGENCY ADMINISTRATIVE GRIEVANCE SYSTEM

AUTHORITY: 5 U.S.C. 1302, 3301, 3302, 7301; E.O. 9830, 3 CFR 1945–1948 Comp., pp. 606–624; E.O. 11222, 3 CFR 1964–1969 Comp., p. 306.

§ 771.101 Continuation of Grievance Systems.

Each administrative grievance system in operation as of October 11, 1995, that has been established under former

regulations under this part must remain in effect until the system is either modified by the agency or replaced with another dispute resolution process.

[60 FR 47040, Sept. 11, 1995]

PART 772—INTERIM RELIEF

Subpart A—General

Sec.

772.101 Basic authority.

772.102 Interim personnel actions.

AUTHORITY: 5 U.S.C. 1302, 3301, 3302, and 7301; Pub. L. 101–12.

SOURCE: 57 FR 3712, Jan. 31, 1992, unless otherwise noted.

Subpart A—General

§ 772.101 Basic authority.

This part establishes a mechanism for agencies to provide interim relief to employees and applicants for employment who prevail in an initial decision issued by the Merit Systems Protection Board (MSPB) as required by the *Whistleblower Protection Act of 1989*, Pub. L. 101–12 (codified at 5 U.S.C. 7701(b)(2)(A)). The interim relief provisions of the law are applicable whether or not alleged reprisal for whistleblowing is at issue in an appeal to MSPB.

§ 772.102 Interim personnel actions.

When an employee or applicant for employment appeals an action to MSPB and the appeal results in an initial decision by an MSPB administrative judge granting interim relief under 5 U.S.C. 7701(b)(2)(A) and a petition for review of the initial decision is filed (or will be filed) with the full Board under 5 U.S.C. 7701(e)(1)(A), the agency shall provide the relief ordered in the initial decision by taking an interim personnel action subject to the following terms:

(a) Interim personnel actions shall be made effective upon the date of issuance of the initial decision and must be initiated on or before the date of a petition for review by the agency or within a reasonable period after the date it becomes aware of a petition for review by the appellant;

(b) The relief provided by interim personnel actions shall end:

(1) When the full Board issues a final decision on a petition for review filed by an applicant for employment, employee, and/or agency under 5 U.S.C. 7701(e)(1)(A),

(2) When the initial decision becomes final pursuant to an action of the full Board or pursuant to a decision by an applicant for employment, employee, and/or agency to withdraw (or change intentions to file) any petition for review filed under 5 U.S.C. 7701(e)(1)(A), or

(3) When the applicant for employment or employee requests or reaches agreement with the agency that the interim relief ordered in the initial decision be cancelled;

(c) Interim relief shall entitle the applicant for employment or employee to the same compensation and benefits he or she would receive if the relief effected had not been on an interim basis except as provided in paragraph (f) of this section;

(d) An interim personnel action shall not be taken if the MSPB administrative judge, pursuant to 5 U.S.C. 7701(b)(2)(A)(i), determines that granting interim relief is not appropriate;

(e) An interim personnel action under this part shall not entitle the applicant for employment or employee to an award of back pay or attorney fees.

[57 FR 3712, Jan. 31, 1992, as amended at 59 FR 36353, July 18, 1994; 59 FR 65704, Dec. 21, 1994]

PART 792—FEDERAL EMPLOYEES' HEALTH AND COUNSELING PROGRAMS

Subpart A—Regulatory Requirements for Alcoholism and Drug Abuse Programs and Services for Federal Civilian Employees

Sec.

792.101 Statutory requirements.

792.102 General.

792.103 Coverage.

792.104 Responsibilities of the Office of Personnel Management.